BOOK REVIEWS.

COMMENTARIES ON THE LAW OF NEGLIGENCE. By Seymour D. Thompson. Indianapolis: The Bowen-Merrill Company. 1902. pp. xlvii, 1118.

According to the author's original plan, as announced by the publishers of this work, the third volume was to embrace the titles, Carriers of Passengers, Negligence of Municipal Corporations and Negligence of Public Officers. As published, the volume includes but a single title, Carriers of Passengers, although ten hundred and fifty pages are filled with the discussion of this title.

Like its predecessors, this volume is not limited to the law of negligence. Were it so limited its contents would have been but a fraction of their present bulk. For example, the first four chapters deal with the topics, who are common carriers of passengers: their common-law as well as their contract obligations to passengers, and who are passengers. A later chapter deals with regulations of the carrier, and one still later is largely devoted to a discussion of what is baggage, and the carrier's lien thereon. In this way several hundred pages are filled with material which has only an accidental connection with the law of negligence, valuable and interesting though that material is.

Every topic is discussed very fully. and the array of authorities cited is most imposing. The usefulness of the volume would be much enhanced by a table of cases. It is difficult to understand why this table is postponed to the completion of the entire work. unless it be done with a view to inducing the purchasers of each volume to buy the whole set. A very valuable chapter is the one in which the liability of carriers for malicious torts committed by their servants and agents upon passengers is considered. The cases are not only collated with care, but are criticised with great ability.

A TREATISE ON THE LAW OF MASTER AND SERVANT. By Charles Manley Smith. Fifth Edition. By Ernest Manley Smith: London. Sweet & Maxwell, Limited. 1902. pp. xcviii, 823.

A new edition of this standard work will be welcomed by all lawyers who care to keep abreast of legislation and judicial decisions in Great Britain upon the important topic of Master and Servant. And this is a new edition in fact as well as in name. Many parts have been entirely rewritten. A good example of the thorough-going revision which characterizes this volume is found in the last section of chapter one. Every line of the old section is discarded, and not only new matter, but new doctrine inserted instead. This radical change was made necessary by the British Bankruptcy Act of 1883, as construed by the Court of Appeal, in *Re* Roberts[1].

[1](1900) 1 Q. B. 122.

A valuable feature of the book is its reprint of all the most important acts of parliament relating to the subject, beginning with Ch. 27 of 22 Geo. 2 and closing with Ch. 22 of 1st Ed. 7. The last named statute is known as The Factory and Workshop Act of 1901; a law which regulates with great minuteness the sanitary condition of factories and workshops, as well as the treatment of servants by masters. The statutes reprinted in the Appendix fill two hundred and eighty-five pages.

As the editor of this volume is the son of the author and was associated with him in the preparation of the fourth edition, the reader may feel assured that nothing of importance has been omitted from previous editions, and that the plan of the author has not been marred by unnecessary and discordant changes. The volume is a fine specimen of the bookmaker's art. If an American reprint appears, let us hope it will equal the English original.

THE RIGHT TO AND THE CAUSE FOR ACTION. By Hiram L. Sibley. Cincinnati: W. H. Anderson & Co. 1902. pp. xxxii, 141.

This book is an effort to demonstrate two propositions, First: That the "right to action" is wholly independent of the substantive law, and has as its essential elements "(1) the existence of a legal wrong, and (2) that part of the law which provides the means for its redress." Second. That the wrong or *delict* is not merely one of the elements of a cause of action, but is the only cause for action, the right as defined by the substantive law being, as the author states, "related to the wrong only as a condition to the existence of the latter." Or stated in other words an attempt is made to show the falsity of the generally accepted view as to what constitutes a "cause of action," and which perhaps, has nowhere been more clearly stated than by the late Professor Pomeroy.[1] According to this view, "the primary right and duty and the delict or wrong combined constitute the cause of action in the legal sense of the term." The demonstration of these propositions does not appear to have been accomplished, and it is not likely that Judge Sibley's work will cause any great number to abandon what he designates as the "Pomeroy idea."

The author believes he finds support for his views in legal principles, in adjudged cases, and in precedents of pleadings; but it is doubtful if many careful readers will find the same support for these views in the quotations made and cases cited. The limits of this review prevent any exhaustive statement of the reasons which lead to the conclusions above expressed, but a few of them ought in fairness to be indicated. Great stress is laid upon cases under the Statute of Limitations, deciding when the cause of action arose, that is whether the action was or was not barred by the statute, the contention being that these cases must decide what the cause is, and further, that, because sometimes in the course of the argument, judges refer to the wrong or misconduct of the defendant as the cause of action, we have a judicial determination that the wrong is the sole cause of action.

In answer to this contention it should be noted, first, that the question before the court and decided is "when" the cause of action arose, not what constitutes a cause of action; second, that the advo-

[1] Code Remedies. 3rd Edition. pp. 511 *et seq.*